

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANN OTSUKA, an individual,
et al.,

CERTIFIED COPY

Plaintiffs,

vs.

No. C-07-02780-SI

POLO RALPH LAUREN CORPORATION,
et al.,

Defendants.

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STATEMENT ON THE RECORD
RE NON-APPEARANCE OF ANN OTSUKA
Thursday, May 15, 2008

Reported by:
IRIS MEINKE-SMITH, RMR/CRR
CSR No. 3798
Job No. 18235



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APPEARANCES

For the Defendants:

GREENBERG TRAURIG, LLP

BY: WILLIAM GOINES, ESQ.

1900 University Avenue, Fifth Floor

East Palo Alto, California 94303

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E X H I B I T S

Deposition of JANIS KEEFE

March 17, 2008

Exhibit	Page
Ex 1 Amended Notice of Taking Deposition of Plaintiff Ann Otsuka and To Produce Documents, 14 pages	10
Ex 2 Defendants' Notice of Deposition of Ann Otsuka, 14 pages	10

1 MR. GOINES: Let's go on the record.

2 This is Bill Goines. And we are on the
3 record in the Ann Otsuka versus Polo Ralph Lauren
4 Corporation matter.

09:47:46 5 Today was the day scheduled for the
6 deposition of Plaintiff Ann Otsuka.

7 I will mark as Exhibit 1 or ask our court
8 reporter to mark as Exhibit 1 an Amended Notice of
9 Taking Deposition of Plaintiff Ann Otsuka and To
09:48:01 10 Produce Documents.

11 It was served by mail and by facsimile on
12 May 1st, 2008, on the Law Offices of Patrick R.
13 Kitchen and the Law Offices of Daniel L. Feder.

14 The deposition was scheduled to commence at
09:48:18 15 9:30 on May 15th in the offices of Greenberg Traurig,
16 LLP, 1900 University Avenue, 5th floor, East Palo
17 Alto, California.

18 It is now 9:47 or 9:48, and there has been
19 no appearance at the deposition this morning by
09:48:48 20 Ann Otsuka or her attorney Daniel L. Feder. There
21 has also not been an appearance by Patrick R.
22 Kitchen, who is counsel for co-plaintiffs in this
23 action, Corrine Phipps, Janis Keefe and Renee Davis.

24 I wanted to note the non-appearance not only
09:49:52 25 of Plaintiff Ann Otsuka but of her counsel and

1 co-counsel for the other named plaintiffs in this
2 case as a prerequisite to further motions in this
3 matter on behalf of Defendants Polo Ralph Lauren
4 Corporation, et al.

09:50:08 5 I also want to point out that there's been a
6 series of communications with regard to the taking of
7 Ms. Otsuka's deposition.

8 I will ask the court reporter to mark as
9 Exhibit 2 Defendants' Notice of Deposition of Ann
09:50:23 10 Otsuka, setting her deposition for April 30, 2008.
11 That notice was served on March 31, 2008 by personal
12 service to the Law Offices of Patrick R. Kitchen and
13 Daniel L. Feder.

14 On April 17th at 12:20 p.m. I sent an e-mail
09:50:57 15 to Patrick R. Kitchen and Dan Feder with regard to
16 Ms. Otsuka's deposition.

17 I wrote: "Patrick and Dan, We have the
18 deposition of Ann Otsuka set for April 30. Is there
19 any way we can do it the following week. I have just
09:51:13 20 had a matter arise that will require attendance on
21 April 30. Kindly let me know. Thanks for your
22 consideration."

23 I did not have a response to that e-mail.

24 And on April 21, 2008, at 4:30 p.m., I wrote
09:51:30 25 another e-mail to Patrick R. Kitchen and Dan Feder in

1 which I wrote: "Not having heard from you on the
2 below message," which was the message just recited,
3 "we are planning on going forward with Ms. Otsuka's
4 deposition on April 30 in our office."

09:52:01 5 At 4:42 that afternoon I received an e-mail
6 from Patrick Kitchen stating: "The 30th is fine with
7 me. What time are we going to begin? Are you going
8 to attend the Resnick depo in your Chicago office?"

9 At 4:44 the same date I wrote to Mr. Kitchen
09:52:22 10 and said: "I will see you in Chicago. I will track
11 down the Notice for Ann, but I think it is set for
12 9:30."

13 On April 21st, at 5:39 p.m., I received an
14 e-mail from Arthur Kim, who I understood to be an
09:52:41 15 associate in the Law Offices of Daniel Feder.

16 Mr. Kim wrote to me, copying Mr. Kitchen and
17 Mr. Feder that: "We are agreeable to rescheduling
18 the deposition of Ms. Otsuka for the week after. We
19 will get back to you with dates."

09:52:57 20 I wrote at 5:41 that afternoon to Mr. Kim,
21 that: "Arthur it may not be necessary. I will
22 confirm tomorrow."

23 The next morning at 8:12 a.m. I wrote to
24 Mr. Kim in another electronic correspondence and
09:53:18 25 said: "Arthur thanks. That would be great as I can

1 take care of something I need to do on the 30th. I
2 am available any day the following week except
3 Monday. Please confirm what day works for you and
4 Ms. Otsuka. I will be with Patrick Kitchin tomorrow
09:53:37 5 in Chicago for the Harvey Resnick depo and would like
6 to firm up a date then. Thanks again."

7 That morning, April 22, at 10:42 a.m. I
8 received an e-mail from Mr. Kim in which he said:
9 "I will get back to you as soon as I hear back from
09:54:00 10 our client."

11 At 1:16 p.m. that day I wrote in response to
12 Mr. Kim an e-mail that stated: "Thanks Arthur. I
13 appreciate it. Can you try and let me know today?"

14 I received no word from Mr. Kim on either
09:54:24 15 the 22nd or 23rd.

16 And on April 24th at 9:29 a.m., I wrote an
17 e-mail to Mr. Kim in which I stated: "Arthur any
18 update? I would like to get a new date pinned down
19 given our upcoming briefing schedule."

09:54:48 20 Mr. Kim wrote me that day at 11:10 a.m., the
21 24th, again: "Mr. Goines: I'm sorry, but I haven't
22 heard back from our client yet. I will get back to
23 you as soon as we do."

24 I responded to that e-mail at 11:16 a.m. and
09:55:12 25 wrote: "Thanks Arthur. Are we at least planning on

1 doing her depo the following week?"

2 Mr. Kim responded at 11:43 a.m. again on the
3 24th: "Yes. It will depend on her schedule, but I
4 will be defending her deposition and my schedule is
09:55:31 5 free."

6 I responded to Mr. Kim at 11:45 a.m. that
7 day, and stated: "Thanks Arthur. Please let me know
8 what date works."

9 On Sunday, April 27th, at 9:44 a.m. I wrote
09:55:58 10 an e-mail to Mr. Kim. I stated: "Arthur let's talk
11 on Monday as I need to get a date. Thanks."

12 The subject matter of that e-mail was "Re:
13 Ann Otsuka's Deposition."

14 Again, having heard nothing from Mr. Kim, my
09:56:19 15 associate, Alisha M. Louie wrote to Mr. Kim and
16 Mr. Feder with a copy to Mr. Kitchin an e-mail on
17 April 28th at 5:47 p.m. in which she stated:
18 "Arthur and Dan: We request your response to this
19 e-mail so that we may coordinate the re-scheduling of
09:56:37 20 Ann Otsuka's deposition. Please contact me with
21 proposed dates for Ms. Otsuka's deposition."

22 On the evening of April 28 at 6:52 p.m.
23 Mr. Kim responded to Ms. Louie's e-mail with copies
24 to Mr. Feder, myself and Mr. Kitchin, in which he
09:56:58 25 stated: "Alisha: I can't give you any dates right

1 now because I am still waiting to hear back from our
2 client."

3 On Tuesday, April 29th, at 3 p.m., Ms. Louie
4 wrote again to Mr. Kim and Mr. Feder, copies to
09:57:16 5 myself, Mr. Kitchin, and Jeremy Meier of Greenberg
6 Traurig, Sacramento, and said: "Arthur: We have
7 been patiently awaiting a new date for Ms. Otsuka's
8 deposition in light of our agreement to continue her
9 deposition. We require a proposed date for
09:57:33 10 Ms. Otsuka's deposition by the close of business
11 tomorrow, April 30, 2008. Should you fail to provide
12 us with a date, we will notice Ms. Otsuka's
13 deposition for a convenient date that complies with
14 the procedural requirements of the Federal Rules. We
09:57:50 15 hope you will cooperate with this request and look
16 forward to your response."

17 On April 30, at 11:40 a.m., Ms. Louie again
18 wrote to Arthur Kim and Dan Feder by e-mail with a
19 copy to myself, Mr. Meier, Mr. Kitchin in which she
09:58:11 20 wrote: "Arthur and Dan: This is a friendly reminder
21 of our request for proposed dates for Ms. Otsuka's
22 deposition. As we informed you yesterday, we require
23 dates of availability by the close of business today.
24 Otherwise, we will notice Ms. Otsuka's deposition
09:58:29 25 without your input as to date."

1 To the best of my knowledge, we did not
2 receive any response to the e-mail just recited dated
3 April 30. And, as a result, we caused to be served
4 on Mr. Feder and Mr. Kitchin, co-counsel for
09:58:50 5 plaintiffs, Exhibit 1, the Amended Notice of Taking
6 Deposition.

7 Yesterday at 1:32 p.m., May 14th, Mr. Kim
8 wrote an e-mail to Ms. Louie copies to Mr. Feder,
9 myself, Mr. Meier, Mr. Kitchin, and a woman whose
09:59:18 10 e-mail address is mmg@hudsonslaw.com, who I
11 understand to be working with Mr. Kitchin in this
12 matter in which he wrote: "Alisha: We will not be
13 appearing at Ann Otsuka's deposition tomorrow. We
14 have not been able to reach Ms. Otsuka yet, although
09:59:38 15 we are still trying."

16 We are now at 9:59. There has been no
17 appearance by Ms. Otsuka, her counsel, or co-counsel
18 for plaintiffs, Mr. Kitchin. And we are concluding
19 this proceeding this morning without waiving any
10:00:02 20 rights of Defendants Polo Ralph Lauren to take
21 whatever steps it believes reasonably necessary in
22 response to Ms. Otsuka's failure to participate in
23 this process.

24 (Exhibits 1 and 2 were marked for
25 identification.)

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(Statement on the record concluded
at 10:00 a.m.)

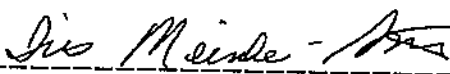
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REPORTER'S CERTIFICATE

I certify that the statement on the record was reported at the time and place therein named; that said statement on the record was reported by me, a duly Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties involved in said matter, nor in any way interested in the outcome of the associated case.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of May, 2008.



IRIS MEINKE-SMITH

Certified Shorthand Reporter
Certificate No. 3798